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8 *Munoz*

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION
12

13 **DORA SOLARES,**

14 Plaintiff,

15 v.

16 **RALPH DIAZ, et al.,**

17 Defendants.
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1:20-CV-00323-LHR

**DEFENDANTS' RESPONSE TO
OSUNA'S EMERGENCY MOTION**

Judge: The Honorable Lee H.
Rosenthal

Action Filed: March 2, 2020

Non-party Osuna seeks seventeen separate types of relief in a wide-ranging motion filed June 30, 2025. (Osuna’s Emergency Motion at 18-20, ECF No. 183.) Defendants Burnes, Pena, Garcia, Gallemore, Maytubby, and Munoz oppose the relief sought in items 13 and 14, which assert that Defendants’ counsel has a unwaivable conflict in representing Defendants. (*Id.* at 19.) The same Defendants further propose that in place of the relief sought by Osuna, the Court should consider a stay of this litigation, because Osuna’s Fifth Amendment rights are implicated.

I. DEFENDANTS’ COUNSEL IS NOT CONFLICTED.

In item 13, Osuna asserts that “The Attorney General’s continued participation in both matters constitutes an unwaivable conflict of interest.” (*Id.*) There is no conflict of interest. A conflict of interest arises where representation of one client is adverse to, or materially limits, representation of another client. (Cal. Rule of Professional Conduct 1.7.) In this matter, the Attorney General’s office represents Defendants Burnes, Pena, Garcia, Gallemore, Maytubby, and Munoz. Osuna asserts that the Attorney General is also representing the State of California in Osuna’s criminal prosecution. (Osuna’s Mot. at 19.) The Defendants represented by the Attorney General (state employees and former state employees) on the one hand, and the State of California on the other, are not adverse to one another, and representation of one does not limit the Attorney General’s representation of the other. Accordingly, there is no conflict.

In item 14, Osuna asserts that “sanctions or disqualification of conflicted counsel may be appropriate.” (*Id.*) As shown above, there is no conflict. Accordingly, neither sanctions nor disqualification is appropriate. Osuna’s motion should be denied as to items 13 and 14.

II. THE COURT SHOULD CONSIDER A STAY.

While much of the relief sought by Osuna is not warranted, he raises a valid concern about the potential for compromise of the criminal prosecution should this civil matter go forward to further discovery. (Osuna’s Mot. at 3 (asserting potential compromise to Osuna’s due process and Fifth Amendment rights).) This Court should consider a stay of this civil matter in favor of allowing that criminal matter to proceed unfettered. *See e.g., Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (Decision whether to stay civil proceeding in the face of a parallel criminal proceeding should be made “in light of the particular circumstances and

1 competing interests involved in the case.”) When considering whether to stay civil litigation in
2 favor of a parallel criminal proceeding, the main factor to consider is whether the criminal
3 defendant’s Fifth Amendment rights are implicated. *Id.* (identifying factors. Here, Osuna asserts
4 that his Fifth Amendment rights would be compromised by further discovery in this matter.
5 (Osuna’s Mot. at 2-3.) If Osuna’s Fifth Amendment rights would be compromised, the Court
6 should stay this civil proceeding while the criminal proceeding remains pending.

7 Dated: July 8, 2025

Respectfully submitted,

8 ROB BONTA
9 Attorney General of California
10 JON S. ALLIN
11 Supervising Deputy Attorney General

12 */s/ Jeremy Duggan*

13 JEREMY DUGGAN
14 Deputy Attorney General
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16 *Burnes, Pena, Garcia, Gallemore, Maytubby,*
17 *and Munoz*

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CERTIFICATE OF SERVICE

Case Name: **Dora Solares v. Ralph Diaz, et al.** No. **1:20-CV-00323-LHR**

I hereby certify that on July 8, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

➤ **DEFENDANTS' RESPONSE TO OSUNA'S EMERGENCY MOTION**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 8, 2025, at Sacramento, California.

K. Vitalie
Declarant for eFiling

/s/ **K. Vitalie**
Signature

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On July 8, 2025, the foregoing document(s) have been mailed in the Office of the Attorney General's internal mail system, by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Jamie Osuna, BD-0868
California State Prison, Corcoran (3476)
P.O. BOX 3476
CORCORAN, CA 93212-3476

In Pro Per

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 8, 2025, at Sacramento, California.

I. Martinez
Declarant for Service by U.S. Mail

/s/ **I. Martinez**
Signature